

18184 Ms. Botsford

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-202041 *Entitlement to* DATE: May 20, 1981

MATTER OF: Louis Pohopek - Compensation for Traveltime

DIGEST: Employee, nonexempt under Fair Labor Standards Act (FLSA) 29 U.S.C. 201 et seq. (1976), travelled for 6 hours on a nonworkday during his corresponding duty hours. Although such time is hours of work under FLSA, since he had a holiday off and he only worked 38 hours under FLSA during that workweek and he has already been compensated for 40 hours under title 5, United States Code, he is not entitled under FLSA to 6 hours pay at his regular rate in addition to the 40 hours basic pay he has received.

This decision is in response to a request from Mr. A. W. Countryman, Chief Steward and Mr. John P. O'Brien, President, Federal Employees Metal Trades Council, Portsmouth Naval Shipyard, Portsmouth, New Hampshire. They have requested our decision concerning the entitlement of Mr. Louis Pohopek, a pipefitter at the shipyard, to compensation for time he spent on a nonworkday, traveling to a temporary duty site. This question has been handled as a labor-management relations matter under our procedures contained in 4 C.F.R. Part 21 (1980). We did not receive any comments from officials at the Portsmouth Naval Shipyard.

Mr. Pohopek was assigned to temporary duty in Scotland and was directed to begin travel at the end of his workday on Friday, September 9, 1977. He went from his home to Boston and departed for Scotland at 11 p.m. He arrived in Scotland at 2 p.m. on Saturday. Six hours of his traveltime on Saturday corresponded to his regular workday hours.

The union reports that the comptroller of the shipyard stated that Mr. Pohopek, who is nonexempt under the Fair Labor Standards Act (FLSA) 29 U.S.C. 201 et seq., was not entitled to compensation for his Saturday traveltime under the FLSA since he had worked only 32 hours during the week prior to the travel - the Monday of that

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week was Labor Day. The comptroller apparently reasoned that because the FLSA provides only for overtime entitlement, the traveltime could not be counted as hours of work unless 40 hours of actual work had been completed prior to the travel. The union has asked whether Mr. Pohopek's Saturday traveltime can nevertheless be considered hours of work under FLSA, and it therefore asks if Mr. Pohopek can be compensated at his regular rate of pay for that time.

As a nonexempt employee under the Fair Labor Standards Act, Mr. Pohopek is entitled to overtime compensation under the FLSA or title 5, United States Code, whichever provides the greater benefit. 54 Comp. Gen. 371, 375 (1974). It is clear that Mr. Pohopek's Saturday traveltime during his corresponding work hours is "hours of work" under the FLSA. Attachment 4 to FPM 551-1, May 15, 1974, provides at paragraph C that:

"Time spent traveling (but not other time in travel status) away from his official duty station is 'hours worked' when it cuts across the employee's workday. The time is not only 'hours worked' in regular workdays during normal work hours but also during the corresponding hours on nonwork days."

The same attachment, however, provides that:

"Excused absences with pay (holidays, sick, annual, or other paid leave) are not periods of work even though the employee is compensated for those periods of nonwork."

Therefore, under the FLSA, Mr. Pohopek may be considered to have worked a total of 38 hours - 4 workdays of 8 hours each and 6 hours of traveltime.

Under the provisions of 5 U.S.C. 5544(a) (1976), an employee may not be compensated for traveltime away from the official duty station unless the travel:

"(i) involves the performance of work while traveling,

"(ii) is incident to travel that involves the performance of work while traveling,

"(iii) is carried out under arduous conditions, or

"(iv) results from an event which could not be scheduled or controlled administratively.

It does not appear that Mr. Pohopek's Saturday travel falls within any of the above categories.

Under title 5, unlike the FLSA, a paid absence for holidays or annual or sick leave is considered employment. FPM Supp. 532-1, subchapter S-8-4.b. (8), May 31, 1978. According to the provisions of title 5, therefore, Mr. Pohopek is entitled to 40 hours of basic pay - 8 hours for the holiday he was off and 32 hours for four, 8 hour days worked Tuesday through Friday.

Mr. Pohopek may not receive his regular rate of pay for his traveltime under FLSA in addition to the 40 hours he has been paid under title 5. Such compensation would be an improper combination of the benefits provided by the FLSA and title 5. Since Mr. Pohopek has received compensation for 40 hours under title 5 for the workweek in question and since under FLSA he has only worked 38 hours he has therefore received the greater of the benefits provided by the applicable laws.



Acting Comptroller General
of the United States